IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

COURT-IV

I.A.(IBC)/4503/2023
IN
C.P.(IB)No.901/ND/2020

IN THE MATTER OF:

Mrs. Soni Singh & Anr.
... Applicants

Versus
Mr. Sandeep Goel
Resolution Professional
M/s. Sarvottam Realcon Private Limited
... Respondent

IN THE MATTER OF:
Mr. Suraj Kumar Kaushal & Ors.
...Financial Creditor

Versus

M/s. Sarvottam Realcon Private Limited
...Corporate Debtor

CORAM:
SH. MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA,
HON'BLE MEMBER (TECHNICAL)

Order Delivered on:18.10.2023

ORDER

PER: SH. MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (J)

The instant interlocutory application is jointly filed on behalf of Mrs Soni Singh & Mr. N.K. Singh ('applicants') under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ('Code') read with Rule 11 of the National Company Law Tribunal Rules, 2016 ('NCLT Rules') seeking the following prayer(s):-

a) Pass a direction to condone the delay of 503 days (starting from 10.10.2021 till 24.02.2023) in filing the claim FORM-CA by Applicants within the stipulated period of ninety (90) days as per Regulation 12(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
b) Direct the Resolution Professional/Respondent to accept the claim of Applicants as Financial Creditor for a total claim of INR 74,41,437.88/- which is inclusive of INR 48,68,302/- as Principal amount and which also includes 8% interest per annum.
c) Pass any other or such further order which this Hon'ble Adjudicating Authority may deem fit and proper in the facts and circumstances of this case.

2. Briefly stated the facts of the present as averred by the applicant are that Corporate Insolvency Resolution Process was initiated against M/s. Sarvottam Realcon Private Limited ('Corporate Debtor') vide the Hon'ble Adjudicating Authority order dated 09.07.2021 and Mr. Sandeep Goel was appointed as the Interim Resolution Professional and later confirmed as Resolution Professional of the Corporate Debtor. The Public Announcement inviting claims from the stakeholders of the Corporate Debtor was made on 14.07.2021 and the last date for submission of claim was 26.07.2021. However, the Applicants had submitted the claim in Form CA for an amount of Rs.74,41,437.88/- along with the documents to the Respondent vide e-mail dated 24.02.2023. The Respondent had rejected the claim of the Applicant vide e-mail dated 03.03.2023 stating that an application has already been filed under Section 30(6) of the Code,2016 for approval of the Resolution Plan of the Corporate Debtor.

3. The Applicants submitted that the reason for the delay in filing the claim by the Applicants are that the Applicant No.1 is a home maker and was preoccupied with family responsibilities and the Applicant No.2 is an employee with Income Tax Department and owing to the nature of job,

Applicant No.2 has to frequently travel to various cities and hence, he was unable to follow up actively on the instant mater.

4. Further, the Applicant submitted that the applicants had attached the Bank Statements along with Form CA reflecting the amount paid by the Applicants in favor of the Corporate Debtor's book along with acknowledgement receipts by Corporate Debtor acknowledging the payment made to Corporate Debtor by the Applicant. To support the contention, applicant had placed reliance on the Hon'ble NCLAT's Judgement in the matter of "Puneet Kaur vs. KV Developers and Ors." [Company Appeal (AT)(Ins) No. 390 of 2022].

5. The Respondent had filed its reply and submitted that Public Announcement was made in accordance the Insolvency and Bankruptcy Code, 2016 read with Regulation 6(1) & 6(2) of the CIRP Regulations,2016 in Form-A inviting the Claims in the Business Standard dated 14.07.2021 (English & Hindi Edition) as well as on the IBBI Website wherein the last date for submission of proofs of claim was 26.07.2021. Further, it was submitted that the ex-management of the Corporate Debtor is not cooperating with the Respondent and had not provided the complete records and assets of the Corporate Debtor except Tally data and partial records, like ledgers, Statement of Accounts etc. despite follow up, therefore, the RP had collated the claim relying upon the claim documents submitted by the claimants and the available records of the Corporate Debtor through two way verification in the absence of complete records of CD.

6. The Respondent further submitted that the resolution plan submitted by M/s. Anugraham Builders has been approved by the COC in its 20th COC meeting held on 24th December, 2022 with 100% approval and an application bearing IA 387/2023 for the approval of the resolution plan is pending before this Hon'ble Adjudicating Authority.

7. Further, the applicants have filed their claim in FORM CA before the respondent/RP on 24.02.2023 via email belatedly after more than 579 days along with the documents in which various discrepancies were found and the claim was rejected by the respondent /RP vide reply email dated 03.03.2023 for the reasons that the 'Claim' was filed after a delay of 579 days and in the meanwhile the Resolution Plan has been filed before this Hon'ble Adjudicating Authority for approval (now pending adjudication) and RP is not in a position to admit the claim at this stage. Also, the Respondent in its reply email dated 03.03.2023 to the applicants, had pointed out there are various discrepancies found in the documents provided by the applicants.

8. Further, the respondent states that para 6.3 of Clause (ii) of the Resolution Plan as approved by the CoC and pending for this Hon'ble Adjudicating Authority's approval provides that,“ Post the approval of Resolution Plan by Committee of Creditors on the Approval Date, no claims shall be accepted by the Resolution Professional"

9. The Respondent states that the claim filed by the applicant is beyond 90 days as stipulated in Regulation 12(2) of the IBBI (Insolvency Resolution Process for Corporate Person) Regulation, 2016. Further, the Respondent submits that it is the obligation of individuals to not only be aware of their rights under the law, but also to be vigilant while exercising or using the same, however, the Applicants in the present case had slept over their rights. The law helps the vigilant and not those who sleep over their rights. To support the contention, Respondent placed reliance on **Mukul Kumar v. M/s. RPS Infrastructuture Limited [Company Appeal (AT) (Ins) No. 1050 of 2020 decided on 30.07.2021].**

10. We have heard Ld. Counsel for both the parties and perused the averments made in the application as well as reply and rejoinder filed by the parties. The relevant documents annexed with the respective submissions and the judgements relied on have been examined in detail.

11. Adverting to the facts of the present case, the public announcement was made on 14.07.2021 wherein the last date for submission of the claim was 26.07.2021. The Committee of Creditors had approved the resolution plan submitted by M/s. Anugraham Builders in its 20th COC meeting held on 24.12.2022. The application bearing I.A./387/2023 seeking approval of the resolution plan is filed before this Adjudicating Authority on 11.01.2023 and is pending for this Adjudicating Authority's Approval. The applicants had submitted their respective claim on 24.02.2023 via e-mail and the said claim was rejected by the Respondent on the ground of being belatedly filed on 24.02.2023.

12. Under the Scheme of the Code, 2016 once an application is admitted for Corporate Insolvency Resolution Process and IRP is appointed, the IRP is required to make Public Announcement. The purpose of making public announcement under Section 15 of the Code, 2016 read with Regulation 6 of CIRP Regulations, 2016 is to make all the interested parties/stakeholders aware of the initiation of the CIRP of the Corporate Debtor so as to enable them to submit their claim and facilitate in preparing the information memorandum which is issued subsequently, after the collection and collation of claims of the operational and financial creditors so as to provide the Prospective Resolution Applicant all relevant information to enable them to make a legally and financially sound Resolution Plan for the Corporate Debtor as is required under Section 29 of the Code, 2016. Therefore, the public announcement made by the RP would constitute deemed knowledge on the applicant herein.

13. Further, the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, provides clear timeline under Regulation 12(2) for submission of claim with proof by the creditor who fails to submit the claim with proof within the time stipulated in the public announcement, quite obviously, to enable the potential resolution applicants to submit realistic and workable resolution plans after due diligence, and which can be taken up further for finalisation. The relevant regulation is reproduced hereunder:

"**12. Submission of proof of claims. –**

(1) xxxxxx

(2) A creditor, who fails to submit claim with proof within the time stipulated in the public announcement, may submit the claim with proof to the interim resolution professional or the resolution professional, as the case may be, on or before the ninetieth day of the insolvency commencement date.

(3) Xxxxx "

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14. It transpires from the record of the present case that the applicants had submitted their claim after 579 days from the invitation of submitting claims through public notice made on 14.07.2021,. The extended time period as per Regulation 12(2) of the IBBI (CIRP) Regulations, 2016 for submission of claims with proof is ninety days from the date of initiation of the insolvency resolution process. This period also expired on 07.10.2021 (i.e., 90 days from the insolvency commencement date). It is an admitted fact that the COC had approved the resolution plan and the same is pending before this Adjudicating Authority much before the said claim was preferred by the applicants before the RP.

15. We are of the view that when the Resolution Plan has already been approved by the CoC and it is pending before the Adjudicating Authority for approval, at this stage, if resolution professional is directed to entertain new claims, after the approval of resolution plan by COC, the CIRP would be jeopardized and the Resolution Process may become more difficult. Keeping in view the object of the IBC which is resolution of Corporate Debtor in a time bound manner to maximize the value, if such belated claims of applicant is accepted at this stage, the very purpose of IBC would be defeated.

16. When we look into the prayers made in the present application, it is clear that the substantial prayer in the application is the condonation of delay in filing the claim in Form CA and admission of the claim of the Applicant. Now coming to the reliance placed by the Applicants on Hon'ble NCLAT judgement in

<u>"Puneet Kaur vs. K.V. Developers Pvt. Ltd. & Ors." on 01.06.2022</u> wherein it was held that liability towards homebuyers who have not filed their claim exists and is required to be included in Information Memorandum. The Resolution Professional was directed to provide all details of homebuyers along with their claims as reflected from the record of the Corporate Debtor, who had not filed their claims. The Resolution Applicant was required to prepare an addendum, which was to be placed before the CoC.

17. This Adjudicating Authority is of the view that the present is a case where Applicant could not have prayed for any direction on the basis of orders of the Hon'ble NCLAT order in "Puneet Kaur vs. K.V. Developers Pvt. Ltd. & Ors." as the suspended directors and management of the Corporate Debtor had not provided the complete books of accounts to the Respondent. The Respondent had collated the claims relying upon the claim documents submitted by the claimants and the available records of the Corporate Debtor through two way verification in the absence of complete records of CD. Therefore, in the absence of the records of the Corporate Debtor, the claim of the Applicant cannot be considered by the Respondent or the Successful Resolution Applicant.

18. This Adjudicating Authority is duty bound to balance the rights of the other stakeholders who have approached the Resolution Professional on time as well as the interest of the Successful Resolution Applicant whose plan had been approved by the Committee of Creditors. If a large number of condonation of delay applications like the present one are entertained at this stage, the object of the Code, 2016 and its timeline will be adversely affected. It is pertinent to note that reversal of stages affects progress, therefore, timely and duly taking steps by all stakeholders is material, otherwise, the process of CIRP will become an endless process.

19. This view is also supported by Hon'ble Supreme Court of India in most recent judgement in case of **<u>M/s. RPS Infrastructure Limited vs. Mukul Kumar in Civil Appeal No. 5590 of 2021, judgement dated 11.09.2023</u>**, wherein it was categorically held hereunder:

"The mere fact that the Adjudicating Authority has yet not approved the plan does not imply that the plan can go back and forth, thereby making the CIRP an endless process. This would result in the reopening of the whole issue, particularly as there may be other similar persons who may jump onto the bandwagon. As described above, in Essar Steel, the Court cautioned against allowing claims after the resolution plan has been accepted by the COC."

20. Resultantly, the present Interlocutory Application i.e., **I.A.(IBC)/4503/2023 in C.P.(IB)No.901/ND/2020 stands dismissed. No orders to costs.**

Sd/- **Sd/-**

(DR.BINOD KUMAR SINHA)
MEMBER (T)

(MANNI SANKARIAH SHANMUGA SUNDARAM)
MEMBER (J)